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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 99 of 1997

with

Civil Application No.2503 of 1977

with

APPEAL FROM ORDER No 176 of 1997

with

Civil Application No. 3871 of 1997.

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CENTRAL BANK OF INDIA

Versus

CENTRAL BANK OFFICERS' ASSOCIATION (GUJARAT)

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Appearance:

1. Appeal from Order No. 99 of 1997  
MR JT TRIVEDI and MR HJ TRIVEDI for Appellant.  
MR KA PUJ for Respondent.
2. Appeal from OrderNo 176 of 1997  
MR KA PUJ for Appellant.  
MR JT TRIVEDI and MR HJ TRIVEDI for Respondent.

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/08/97

JUDGMENT (CAV )

Both these appeals were admitted and taken up for final hearing with the consent of the learned Counsel for the parties. The appeals are directed against the orders dated January 30, 1997 and February 17, 1997 passed by the City Civil Court, Aahmedabad below Applications Ex. 6, 14 and 19 in Civil Suit No. 6095 of 1996. Since the Appeals are directed against the same orders, with the consent of the learned Counsel for the parties, both these appeals have been heard together and are being disposed of by this common order. For the sake of convenience parties are referred to as per their position in the suit.

2. Civil Suit No.6095 of 1996 has been filed by the Central Bank of India (plaintiff ), having its Gujarat zonal office at 4th Floor, Central Bank Building, Lal Darwaja, Ahmedabad. The respondent (defendant ) is the Central Bank Officers' Association(Gujuarat), a registered trade Union having its registered office at First Floor, Central Bank Building, Lal Darwaja, Ahmedabad.

3. According to the plaintiff Bank the defendant Union has embarked upon an agitational programme to disrupt the functioning of the plaintiff bank, so as to pressurise the Bank to concede their illegal demands and therefore, demonstrations, dharnas, relay hunger strikes, shouting of slogans, etc. are being held inside and outside the office/branch premises all over Gujarat. The plaintiff bank has filed the present civil suit for permanent and temporary injunction to restrain the defendant-Union and its members from carrying on any such demonstrations, dharnas, shouting of slogans. etc. inside and/or outside within 200 mts. of office/branch premises. The plaintiff bank accordingly took out a Notice of Motion in the aforesaid suit praying for the interim injunction in the aforesaid terms.

4. The defendant Union had filed Caveat Application. When the notice of motion first came up for hearing before the trial Court on December 30, 1996 the defendant Union prayed for time till January 3, 1997 and it was stated that they will not resort to any type of agitation till January 3, 1997. On that day the respondent filed its reply and therefore, the learned Advocate for the plaintiff Bank submitted application Ex.14 praying for reasonable time to file a rejoinder and also praying for a direction to defendant to maintain status quo. Hence

by order dated January 3, 1997 below Ex.14, the trial Court directed both the parties to maintain status quo till further order. Thereafter the defendant-union moved application Ex.19 on January 30, 1997 for permission to withdraw its conditional consent given on January 3, 1997 and also to vacate the order of status quo passed on January 3, 1997 so far as it related to the defendant-Union.

5. After hearing the learned Advocates for the parties, the City Civil Court, Ahmedabad by order dated January 30, 1997 disposed of Applications Ex.14 and 19 in the following terms :

"the defendant may hold demonstration or shout slogans or any other legal activity, but not within the premises of the plaintiff bank. The defendant would be at liberty to carry on their demonstration etc. outside the premises of the plaintiff bank, its branches regional office in such a way that ingress and egress of the public is not being restrained or disturbed or affected..... This order is made applicable to the branches, regional offices and other offices of the plaintiff bank situated within the city of Ahmedabad."

Thereafter on February 17, 1997 the City Civil Court confirmed the ad interim order dated January 30, 1997 as interim order during the pendency of the suit and disposed of the Notice of Motion at Ex.6 accordingly.

6. The aforesaid orders dated January 30, 1997 and February 17, 1997 are challenged by the plaintiff bank in A.O.No.99 of 1997 and by the respondent Union in A.O No.176 of 1997.

The defendant Union has challenged the interim order in so far as the Union and its members are restrained from carrying on any agitational activities within the bank premises.

On the other hand the plaintiff bank in its appeal has challenged the interim order in so far as the interim injunction is restricted to its branches/offices in Ahmedabad city and the injunction is not granted for other areas within Gujarat zone. Secondly, it has also challenged the order in so far as the defendant Union and its members are not restrained from carrying on demonstration, shouting slogans, etc. within 200 mts. of its branches/office premises.

7. As far as the appeal of the defendant Union is concerned Mr.Puj,learned Advocate for the defendant Union has urged the following contentions:

- (1). the Civil Court has no jurisdiction to entertain the present suit in view of the provisions of Section 18 of the Trade Unions Act, 1926 (hereinafter referred to as the Act);
- (2). the employees and their Union have right to carry on agitational activities like demonstration, dharna, etc. even within the premises of the employer and that such right has been recognized by this Court in the case of Ahmedabad Textile Research Association Vs. ATIRA Employees' Union & Another, 1993 GLH 783 and in the case of M/s. Ambubhai & Diwanji Vs. Gujarat Mazdoor Panchayat & Others, 26(1) GLR 179;
- (3). the plaintiff bank had earlier filed Civil Suit of similar nature wherein injunction was not granted. Therefore, also the trial Court ought not to have granted any interim injunction;
- (4). the plaintiff bank had committed contempt of Court by violating the earlier order of status quo and therefore also the notice of motion of the bank was not required to be heard or granted.

8. Both contention nos. 1 and 2 are taken up for discussion together as the learned Counsel for the appellant has relied on the aforesaid decisions of this Court in support of both the said contentions.

9. As far as the first contention is concerned Mr.Puj has relied on the provisions of Section 18(1) of the Act, which reads as under:

18. IMMUNITY FROM CIVIL SUIT IN CERTAIN CASES:

- (1). No suit or other legal proceedings shall be maintainable in any civil court against any registered Trade Union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of

his capital or of his labour as he wills.

- (2). A registered Trade Union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortious act done in contemplation or in furtherance of a trade dispute by an agent of the Trade Union, if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Unions."

10. The aforesaid provisions have been the subject matter of scrutiny and pronouncement of various High Courts, taking a view which has also been taken by this Court as enunciated in the case of Ahmedabad Textile Research Association Vs. ATIRA Employees' Union & Another, 1993 GLH 783. A Division Bench of this Court has taken the view that it is not within the purview of the Civil Court to prevent or interfere with the legitimate rights of the workmen to pursue their demands by means of strikes or agitations or other lawful activities so long as they do not indulge in acts unlawful, tortious and violent.

11. Mr.Puj has further placed strong reliance on the following observations in the aforesaid decision:

" Any agitation by the workmen must be peaceful and not violent. Any concerned movement by workmen to achieve their objectives is certainly permissible even inside the industrial establishment within the working hours, so long it does not prove to be unlawful, tortious or violent. Demonstrations and dharnas peaceful when they are, have now come to be accepted as falling within the permissible sphere of agitations by labour. Demonstrations and dharnas may cause inconvenience to the management. But they are weapons, as strike is, in the armoury of the labour to pressurise the management to accede to their demands. Such demonstrations and dharnas, when they do not turn unlawful, violent and tortious, cannot be curbed by orders of Civil Court and would come within the purview of Section 18 of the Act...."

It is true that the above quoted observations relied upon by the learned Counsel for the appellant are prima facie in favour of the respondent Union in respect of both the

contentions. However, it is necessary to bear in mind that after making the aforesaid observations the Division Bench also observed that the question as to when the trade union activities will go out of the protected sphere will depend upon the facts and circumstances of each case and that it would be necessary to examine whether the pleadings put forth by the employer take the case out of the mischief of Section 18 of the Act.

12. In the Notice of Motion the plaintiff bank has pointed out as under:

".....demonstration, dharnas, relay hunger strikes, shouting of slogans and that too inside and outside the office/branch premises, work to rule, mass deputation, etc. are being held all over the Gujarat i.e. area where the defendant exercises control. In fact, the same is being intensified. A number of circulars, including those dated 7-11-1996, 19-11-1996, 29-11-1996, 4-11-1996 and 12-12-1996, issued by the defendant, would show the approach of the defendant and the members. Copies of the said Circulars are annexed to the list of documentary evidence. The defendant has a total number of about 628 officers as its members and when a relay hunger strike is in progress, the bank premises are not opened by the concerned Branch Manager or other officer in charge of the keys. Therefore, the plaintiff has to either get the lock of the Branch premises opened by calling a person adept in opening locks or else, the Branch has to remain closed, unless it can be opened with duplicate keys. Even when the Branch premises would be got opened, the banking work would be hampered, unless the plaintiff would get the locks of at least a few cupboards opened to take out the ledgers. Thus, whenever there is agitation, the normal banking services rendered by the plaintiff, which has as many as 215 Branches in Gujarat State, gets largely dislocated or hampered or even brought to complete halt... ..Many demonstrations, including the relay hungerstrikes are held just near the main entrance of the Branch premises and the passage too is blocked. The demonstrations of the types resorted to by the defendant are apt to degenerate into being far from peaceful; in fact, the slogan shouting demonstrations become boisterous and unruly and filthy slogans are shouted against the Management

and the plaintiff and its Executives, including the Zonal Manager and other top brass of the plaintiff. The refusal on the part of the officers, who are members of the defendant-Union to part with the keys of the branch premises and almirahs, safe deposit vaults, etc. is motivated by the desire on the part of the demonstrators to paralyse/disrupt/dislocate the working of the plaintiff and to put the clientele/public to avoidable hardship. Such .. is also an offence under the Indian Penal Code, as the property of the plaintiff bank is not parted with with a view to causing wrongful loss to the plaintiff Bank and to disrupt the normal banking business. The failure to hand over the keys would result in non-opening or late opening of the concerned office/branch of the plaintiff, which is spend for getting the locks opened. The dharnas, slogan shouting and most of other forms of demonstrations are held inside the branch premises too at times in gross violation of the statutorily binding Regulation and those in front of and near the entrance of the branch premises like relay hunger strike are calculated to disrupt the normal banking actively and also, violate the norms in that regard. Therefore, the plaintiff has very serious apprehension that the demonstrators would indulge in whollyunwarranted acts, which would be impossible to be contained in the surcharge and unruly atmosphere created by the demonstrators, who are out to intensify the agitations, as they have till to-date failed to make the Management of the plaintiff to their line. Thus, there is grave and unreasonable apprehension that the demonstrations by the Members of the defendant would create tense atmosphere, which would be beyond the control of anyone. The working of the plaintiff bank, the ingress and egress of the premises of the office/branch premises,etc. are bound to be interfered with in the event of such demonstrations being held inside or near the Branch premises. Certain Branches have currency chests too and all the branches have substantial amounts of cash and other valuable securities. The business of the plaintiff is of a highly sensitive nature and any untoward incident(s) or the likelihood thereof could cause irreparable harm and injury to the plaintiff and also, inconvenience the public dealing with the plaintiff bank. Unless the ingress and egress of

the bank premises is open to the public without any interference and the bank premises are entirely peaceful, there would be erosion of public confidence in the plaintiff bank and also jeopardise the interest of the plaintiff bank. The action of the defendant by way of agitation is unlawful, tortious ..."

The plaintiff bank has thereafter given instances of the demonstrations being carried on by the respondent Union and its members not only in Ahmedabad but in its various branches/offices at Anand, Baroda, Jamnagar, Rajkot, Bhuj, etc. where the branches of the plaintiff bank had to remain closed as even branch Managers had carried the keys with them and on account of non-availability of keys the branches had to remain closed or they were opened very late. At many places the locks were required to be got broken open and the cupboard had to be broken open on many days in the months of October, November and December 1996.

It has further been pointed out in the notice of motion that the office bearers of the respondent union and its members have not rested content by adopting the aforesaid attitude or by merely shouting slogans of indecent and objectionable nature but the property of the plaintiff bank also came to be damaged and some of them had jumped, stood and danced on the sofas. It is the specific case of the plaintiff bank that while the respondent Union declares that its demonstrations are peaceful and legitimate they are paying only lip services to such promises while actually the demonstration are unlawful, tortious, violent and tarnish the image of the plaintiff bank and such demonstration has resulted in disruption of the normal banking business.

A perusal of the notice of motion clearly shows that the demonstrations and activities which were being carried on by the respondent union in the purported exercise of their right to carry on agitation and other lawful activities clearly took their case out of the protected sphere of section 18 of the Act and therefore, prima facie the Civil Court has jurisdiction to entertain the suit of the present nature filed by the plaintiff bank. The averments also bring the case within the purview of the provisions of Order 39 Rules 1 and 2 of the Code of Civil Procedure.

13. As far as the second contention urged on behalf of the defendant union is concerned Mr.Puj again relied on the decision of this Court in the case of ATIRA



(supra) and M/s Ambubhai & Diwanji (supra) for contending that no injunction could have been granted against agitation within the bank premises. The contention is misconceived because the demonstrations did not remain peaceful but some of them turned violent and tortious apart from actually disturbing or having the potential of disturbing the normal business activities of the plaintiff bank. Hence the City Civil Court was justified in granting interim injunction restraining the respondent Union from carrying on agitational activities like demonstrations, dharnas shouting slogans, etc. within the premises of the plaintiff bank.

14. Even otherwise having carefully gone through both the aforesaid authorities cited by the learned Counsel for the defendant Union, it is not possible to accept the contention urged by the learned counsel for the defendant Union. No absolute proposition as is being canvased, has been laid down in the aforesaid decisions. In neither of the aforesaid decisions the Court has held that the Civil Court can never grant any injunction against agitational activities within the office premises. It is true that the right to carry on agitational activities like holding demonstrations and dharnas is considered to be a part of employees' rights. However, one cannot be oblivious of the fact that after all banks, especially public sector banks, are established for rendering banking services to the society at large in general and to their customers in particular. If the bank employees are permitted to carry on agitational activities like shouting slogans, dharnas, etc. within branches/office premises of the plaintiff bank, the banking operations would be disrupted even if they do not come to a standstill. Of course the rights of the employees are important but while construing the extent and ambit of such rights the Court cannot be oblivious of the consequences of uncontrolled untrammelled and irresponsible manner of assertion of their rights which may hurt the very institution which as a public service institution must be in a position to maintain its service oriented image to prosper or even to survive as an institution. In this connection, the following observations made by the Apex Court in the case of General Manager, Railway Board Vs. N.Singh, AIR 1969 SC 966 are most relevant:

" There is no fundamental right for anyone to hold meetings in government premises. If it is otherwise, there is bound to be chaos in our offices. The fact that those who work in a public office can go there does not confer on

them the right of holding a meeting at that office even if it be the most convenient place to do so..."

15. Of course, this does not mean that the Civil Court should grant such an injunction merely because the employer prays for it. The need for this caution has rightly been sounded by this Court in the case of M/s. Ambubhai & Divanji (supra), where bearing in mind the provisions of Section 41(i) of the Specific Relief Act, this Court has observed as under:

"... When the questions pertaining to the dispute between employer and employees arise, the civil Court must examine the problem from the view point of the industrial relations and must examine the conduct of the employer who seeks the aid of the Court from the following points of view:

(a). Has the employer not contravened the provisions of any of the labour legislations pertaining to the Payment of Wages Act, Minimum Wages Act, Factories Act, Workmen's Compensation Act, Employees Provident Fund Act, Employees State Insurance Act and such other Labour Legislations ?

(b). Is the attitude of the employer towards the workmen reasonable ? Is there nothing in relation to the dispute in question and the past on the basis of which it can be said that the conduct of the employer is such that he should not be disentitled to the grant of injunction ?

In the instant case no grievance is made on behalf of the defendant Union that the plaintiff bank has contravened any such labour legislations or that the attitude of the management of the plaintiff bank towards its officers/employees is such or so obviously unreasonable that the bank is disentitled to the grant of injunction. Under the circumstances the trial Court was justified in granting the interim injunction.

16. Mr.Puj next contended that the plaintiff bank had earlier filed a suit, being Civil Suit No.1704 of 1991 with a similar prayer and praying for similar ad interim relief, which was not granted. The matter was further carried in appeal but subsequently the appeal was withdrawn and therefore, the present suit or notice of motion was not maintainable and was barred by the principle of res judicata.

Mr.Puj, however, fairly conceded that there was no final decision on merits in the above suit and therefore, there was no adjudication on merits which would bar the plaintiff bank from filing the present suit. It is further to be noted that the question whether the agitational activities which were complained of by the plaintiff bank in the previous suit were similar in nature to the activities being complained of in the present suit is a matter of scrutiny which can take place at the hearing of the suit and the notice of motion of the plaintiff bank cannot be rejected merely on the aforesaid ground when the plaintiff bank has made out a case for granting interim injunction as has already been discussed above.

17. Mr.Puj also submitted that the plaintiff bank was also guilty of committing contempt of Court by violating injunction order dated January 3, 1997 requiring the parties to maintain status quo in as much as the plaintiff Bank has issued memos, transfer orders and/or suspension orders of the members of the Union.

The trial Court has observed in its order dated February 17, 1997 that as far as the question of contempt of Court is concerned, it shall be dealt with alongwith the trial as the learned Advocate for the defendant Union was absent. In my view , since the trial Court has reserved liberty to the defendant Union to agitate the above question at the time of hearing of the suit, no discussion is called for in the present appeal against the interlocutory order.

18. None of the contentions urged on behalf of the defendant Union can,therefore, be accepted at least at the interim stage and,therefore, their appeal deserves to be dismissed.

19. As far as the appeal of the plaintiff bank is concerned, Mr.J.T.Trivedi has submitted that the plaintiff bank has hundreds of branches all over Gujarat but it was not necessary for the plaintiff-bank to file suits in Courts all over Gujarat. Since the zonal office

of the entire Gujarat zone is in Ahmedabad and since the registered office of the defendant Union is also in Ahmedabad, the present suit is filed in the City Civil Court at Ahmedabad and, therefore, the interim injunction ought not to have been confined to the branches/offices of the plaintiff bank within Ahmedabad city.

As against the aforesaid grievance of the learned counsel for the plaintiff bank, learned counsel for the defendant-Union submitted that wherever there is any agitation outside the city of Ahmedabad the Bank should be required to file suits at all the places where the agitation is carried on.

In my view, the trial Court was not justified in confining operation of the interim injunction to the offices/branches of the plaintiff bank within the city of Ahmedabad, merely because the highest administrative office of the plaintiff bank in Gujarat zone is at Ahmedabad and the registered office of the defendant Union is also at Ahmedabad. The agitational programme is launched by the defendant Union and its members as per the calls being given by the office bearers of the Union having their registered office at Ahmedabad; and as stated in the notice of motion, the agitational activities were being carried on at the branches of the plaintiff bank at Anand, Baroda, Jamnagar, Bhuj and many other places. The employees of the plaintiff bank outside the city of Ahmedabad and within Gujarat Zone, who are carrying on or likely to carry on agitational activities are admittedly members of the defendant Union. In this fact situation, the interim injunction was not required to be confined to the offices/branches of the plaintiff bank within the city of Ahmedabad and, therefore, the interim injunction must be made applicable to all the branches/offices of the plaintiff bank in the entire Gujarat zone.

20. So far as the second grievance of the plaintiff bank is concerned, it would not be practicable to grant the injunction to the effect that the respondents and its members should not carry agitational activities within 200 mts or within 100 mts of the bank premises. With the kind of congestion in the cities and towns and lack of open place, if such a condition were to be imposed, the agitational activities would have to be carried on by the defendant Union in the premises of other persons and employers. The trial Court has sufficiently protected the interest of the bank by directing the respondent Union and its members not to carry out the agitational activities in such a manner that the ingress and egress

of the customers would be affected. Once it is clear that the respondent Union and its members cannot carry on agitational activities within the compounds of the branches/offices of the plaintiff bank and the ingress and egress of the customers will not be obstructed, the request of the learned Counsel for the plaintiff Bank to prescribe space limit outside its premises cannot be accepted at this stage.

21. In view of the above discussion, the orders dated January 30, 1997 and February 17, 1997 passed by the City Civil Court, Ahmedabad below Applications Ex.6, 14 and 19 are confirmed with the modification to the effect that the interim injunction granted by the aforesaid orders shall not be confined to the offices/branch premises of the plaintiff Bank within the city of Aahmedabad only but shall be applicable to all branches/offices of the plaintiff Bank within Gujarat Zone.

22. Appeal from Order No.99 of 1997 is partly allowed to the aforesaid extent. Appeal from Order No.176 of 1997 is dismissed.

23. Civil Application Nos. 2503/97 and 3871/97 are accordingly disposed of as the main appeals are disposed of.

There shall be no order as to costs.

( M.S.Shah J. )

sharma